

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. AB-862X**

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**TWIN STATE RAILROAD COMPANY—  
ABANDONMENT AND DISCONTINUANCE OF SERVICE—  
IN CALEDONIA AND ESSEX COUNTIES, VERMONT**

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**REPLY OF THE MAINE CENTRAL RAILROAD COMPANY  
TO “REQUEST FOR CLARIFICATION”**

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Dated: September 20, 2005

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Maine Central Railroad Company (“MEC”) hereby replies to the filing entered with the Board by the Twin State Railroad Company (“TSR”) on September 1, 2005 styled as a “Request for Clarification” of the Board’s decision of October 12, 2004 (the “Decision”).

**I. FACTUAL BACKGROUND**

This matter centers around a lease and operating agreement that MEC entered into with the Lamoille Valley Railroad Company (“LVRC”) and its designee, TSR, on March 1, 1984 (the “Lease”). The Lease is attached hereto as Exhibit “A.” TSR and MEC are common carriers by rail and subject to the jurisdiction of the STB. 49 U.S.C. § 10501(a).

On October 28, 1981, Guilford Transportation Industries, Inc (“GTI”), a non-carrier who controls MEC, sought authority from the Interstate Commerce Commission

("ICC") (predecessor to the STB), pursuant to 49 U.S.C. § 11343 (1978),<sup>1</sup> to acquire control of the Boston and Maine Corporation ("B&M"), also a common carrier by rail. *See Guilford Transportation Industries, Inc. – Control – Boston and Maine Corporation*, 366 I.C.C. 294 (1982) ("*Guilford I*"). The acquisition of B&M would create an "end-to-end rail system that connected MEC points in Maine with B&M's western gateways at Mechanicville and Rotterdam Junction, NY." *Id.* at 318.

At the time of GTI's application, LVRC operated<sup>2</sup> a single 98-mile east-west line between Swanton and St. Johnsbury, Vermont, which supported overhead traffic from MEC at St. Johnsbury to the Canadian National Railway Corporation at Swanton, or vice-versa, as well as limited traffic that originated or terminated on the line. *Lamoille Valley Railroad Company v. Interstate Commerce Commission*, 711 F.2d 295, 303 (D.C. Cir. 1983). The acquisition of B&M presented the potential diversion of MEC traffic from the LVRC line to B&M lines, which also run east-to-west. *Id.* LVRC did not oppose the acquisition of B&M. However, LVRC argued that the ICC should impose a protective condition on the transaction in the form of a requirement that B&M sell a portion of its line to LVRC so that LVRC would have a substitute source of income in the event there was a significant diversion of traffic to B&M. *Id.* at 304. The ICC approved GTI's application without protective conditions. *Guilford I* at 349.

<sup>1</sup> 49 U.S.C. § 11343 (1978) provided that any transaction, which involved the acquisition of control of a carrier by a non-carrier that already controls another carrier, may only be carried out with the approval and authorization of the ICC. *See Lamoille Valley Railroad Company v. Interstate Commerce Commission*, 711 F.2d 295, n.2 (D.C. Cir. 1983). On January 1, 1996, the Interstate Commerce Commission Termination Act of 1995 became effective and, as a result, 49 U.S.C § 11343 was amended and re-codified at 49 U.S.C. § 11323. *See* Pub L. 104-88, § 102(a).

<sup>2</sup> The State of Vermont (the "State") owned the line from St. Johnsbury, Vermont to Swanton, Vermont. The State through its Agency of Transportation ("VTrans") purchased this line from Lamoille Valley Railroad, Inc. on or about April 22, 1974. *See* Finance Docket No. 27594, Lamoille County Railroad, Inc. and Vermont Transportation Authority, Acquisition and Operation Between St. Johnsbury and Swanton, VT and Finance Docket No. 27587, Lamoille County Railroad, Inc., Stock (ICC served April 22, 1974). LVRC held a leasehold interest in this Line pursuant to a Lease Agreement between LVRC and the State of Vermont dated December 31, 1977.

LVRC appealed the decision of the ICC to the District of Columbia Circuit of the United State Court of Appeals arguing that the test used by the ICC to determine whether protective conditions should have been imposed was “too strict and [did] not comply with the statutory directive that the ICC consider the effect of the [transaction] on ‘adequacy of transportation to the public.’” *Lamoille Valley Railroad Company* 711 F.2d at 300 *citing* 49 U.S.C. § 11344(b)(1) (1978)<sup>3</sup>. The Court found that the test employed by the ICC, *as applied to LVRC*, was too strict and remanded to the ICC to reevaluate the implementation of protective conditions. *Id.* at 305 (emphasis added in decision).

In order to prevent further litigation, GTI, MEC, the State and LVRC entered into a Settlement Agreement on November 1, 1983 (the “Settlement Agreement”). The Settlement Agreement is attached hereto as Exhibit “B.” The Settlement Agreement provided that MEC and LVRC would enter into an Operating Agreement pursuant to which LVRC would operate MEC’s line of railroad between Whitefield, New Hampshire and St. Johnsbury, Vermont (the “Line”). The Settlement Agreement outlines several terms and conditions that were required to be incorporated into the Operating Agreement, including MEC’s continued right to provide service on the Line and LVRC’s obligation to maintain the Line.

Pursuant to the terms of the Settlement Agreement, MEC entered into the Lease with LVRC and, its designee, TSR, which was organized as an affiliate of LVRC for the sole purpose of operating the Line. *See Maine Central Railroad Company, State of New Hampshire – Adverse Discontinuance – Line between Whitefield, NH and St. Johnsbury, VT*, STB Docket No. AB-848 (Served July 1, 2003), p.4, n.3. The Lease was approved

<sup>3</sup> As the owner of the line from St. Johnsbury to Swanton, Vermont, the State of Vermont intervened in the appeal to the District of Columbia Circuit.

by the ICC pursuant to 49 U.S.C. § 11343(a)(2) (1978) on May 16, 1984. *Guilford Transportation Industries, Inc. – Control – Boston and Maine Corporation*, Finance Docket No. 29720 (Sub-No. 1); *Guilford Transportation Industries, Inc. – Control – Delaware and Hudson Railway Corporation*, Finance Docket No. 29772 (ICC decided May 22, 1984) (“*Guilford II*”). The Lease conveys to TSR a leasehold interest in the Line and the right to operate on the Line. MEC retained its fee simple interest in the Line and its common carrier rights and obligations.

MEC sold the eastern portion of the Line, from Whitefield, New Hampshire to Gilman, Vermont (the “Eastern Segment”), to the State of New Hampshire, Department of Transportation in December of 2002. The sale of the Eastern Segment was made subject to the Lease. *State of New Hampshire, Department of Transportation – Acquisition and Operation Exemption – Certain Assets of Maine Central Railroad Company*, STB Finance Docket No. 34307 (STB served Jan. 22, 2003). MEC retained ownership of the western portion of the Line from Gilman to St. Johnsbury, Vermont (the “Western Segment”).

On August 17, 2004, TSR filed a Verified Notice of Exemption (the “Notice of Exemption”) seeking to abandon and discontinue the Western Segment so that it could salvage the rail, ties and other track material (“Rail Assets”). *See also the Decision*. MEC filed a reply to the Notice of Exemption on September 20, 2004 (the “Reply”). The Reply is attached hereto as Exhibit “C.” MEC did not oppose TSR’s discontinuance of the Western Segment.<sup>4</sup> However, MEC did oppose TSR’s attempt to abandon the

<sup>4</sup> In fact, MEC supports TSR’s discontinuance of their leasehold interest. MEC and the State of New Hampshire, prior to the filing of TSR’s Notice of Exemption to Abandon and Discontinue Service, commenced a proceeding to seek an adverse discontinuance of TSR’s leasehold interest in the Line. *See*

Western Segment because TSR is not the fee simple owner and, therefore, does not have standing to seek abandonment. Reply, 2-4. Further, MEC requested that the STB impose conditions on the consummation of the abandonment preventing TSR from removing the Rail Assets. Reply at 1. TSR's abandonment and discontinuance of its rights became effective subject to the conditions requested by MEC. *The Decision* at 3.

On November 1, 2004, TSR filed a complaint in the U.S. District Court for the District of Massachusetts seeking a declaration by the Court that TSR has the right, pursuant to the terms of the Lease, to remove and salvage the Rail Assets on the Western Segment, which is a state law cause of action (the "Complaint"). The Complaint is attached hereto as Exhibit "D." No federal causes of action are alleged in the Complaint.

On December 3, 2004, MEC filed a motion to dismiss the Complaint because the causes of action alleged therein are state law claims that are preempted by the Interstate Commerce Act (the "ICA"). In the alternative, MEC argued that, due to the Board's expertise in the area of abandonment authority, the matter should be referred to the Board under the doctrine of primary jurisdiction in order for the Board to reaffirm that the Board granted TSR authority to abandon and discontinue its rights to operate the Western Segment subject to certain conditions, MEC's common carrier rights and obligations ("Rights") have not been abandoned and the Board retains jurisdiction over the operation of the Western Segment.

In his Order of August 3, 2005 (the "Order"), Judge Tauro referred the matter to the Board for further proceeding. The Order is attached hereto as Exhibit "E."

## II. ARGUMENT

### **The Complaint alleges state law claims that are preempted by the ICA**

In light of the broad scope of preemption pursuant to 49 U.S.C. § 10501(b), TSR cannot pursue the remedy outlined in the Complaint until MEC's Rights with regard to the Western Segment have been abandoned pursuant to authority granted by the Board. For the reasons outlined below, the Board must confirm that the Decision did not allow the abandonment of MEC's Rights. Further, for the reasons outlined below, the Board must find that the Western Segment remains subject to the jurisdiction of the Board and that the causes of action alleged in the Complaint are preempted.

#### **A. The ICA preempts the state remedies sought by TSR.**

The ICA gives the STB exclusive jurisdiction over all aspects of rail transportation, including the “construction, acquisition, operation, *abandonment or discontinuance*” of rail lines. 49 U.S.C. § 10501(b) (emphasis added). Section 10501(b) also decrees that “[e]xcept as otherwise provided in this part,<sup>5</sup> the *remedies provided under this part* with respect to the regulation of rail transportation are *exclusive and preempt the remedies* provided under Federal or *State law*.” *Id.* (emphasis added).<sup>6</sup>

<sup>5</sup> “[T]his part” is part A (Rail) of subtitle IV (Interstate Transportation) of title 49 of the U.S. Code. *See* 109 Stat. 804-05. Part A comprises sections 10101 through 11908 of title 49.

<sup>6</sup> The full text of section 10501(b) reads:

“(b) The jurisdiction of the Board over—

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.”

“As such, [it is clear that the] purpose of Congress when it enacted the [ICA, as broadened by the] ICCTA was to place certain areas of railroad regulation within the exclusive jurisdiction of the STB and to preempt remedies otherwise provided under federal or state law.” *Rushing v. Kansas City Southern Railway Company*, 194 F.Supp.2d 493, 498 (S.D. Miss. 2001). The jurisdiction of the STB over the transportation of rail carriers and the remedies provided under 49 U.S.C. §§ 10101 – 11908 are exclusive and preempt all other remedies provided under state law, including those sought by TSR. *City of Lincoln – Petition for Declaratory Order*, STB Finance Docket No. 34425 (Decided August 11, 2004), pg. 3 citing *City of Auburn v. Surface Transportation Board*, 154 F.3d 1025, 1029-31 (9<sup>th</sup> Cir. 1998), *cert. denied*, 527 U.S. 1022 (1999) (“*City of Auburn*”).

As demonstrated below, while the Decision has granted TSR the authority to abandon and discontinue its Rights to operate the Western Segment, the Decision has not granted authority to abandon MEC’s Rights with regard to the Western Segment. Also as demonstrated below, the ICA provides a remedy with respect to the claim at issue here and does not provide an alternative remedy for this situation. Therefore, TSR’s state law claim is preempted by section 10501(b) and TSR is limited to the remedy provided for under 49 U.S.C. § 10903.

Federal law “shall be the supreme Law of the Land; . . . any Thing in the Constitution or the Laws of any state to the Contrary notwithstanding.” U.S. Const., art. VI, cl. 2. There are three types of preemption pursuant to the Supremacy Clause—(1) express preemption, where the intent of Congress is explicitly stated in the language of a statute or implicitly contained in its structure and purpose; (2) conflict preemption, where



the state law in question conflicts with the federal law; and (3) field preemption, where federal law so thoroughly occupies the field as to leave no room for the states to supplement it. *Cippollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (“*Cippollone*”). Any given situation may involve more than one type of preemption, *see Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 n. 6 (2000), and the case at bar involves both express and field preemption. And where, as here, the express preemptive language of the federal statute is broad and makes no distinction between positive state enactments and common law, state common law remedies also are preempted. *Levesque v. Miles, Inc.*, 816 F. Supp. 61, 67 (D.N.H. 1993) (citing *Cippollone*).

In section 10501(b), Congress has “explicitly stated” its intent to preempt state law remedies that touch upon or concern “transportation by rail carriers.” *Pejepscot Industrial Park, Inc. v. Maine Central R.R. Co.*, 215 F.3d 195, 202 (1<sup>st</sup> Cir. 2000) (“*Pejepscot*”). “The last sentence of § 10501(b) plainly preempts state law.” *Id.*; accord *City of Auburn*, 154 F.3d at 1028-30; *Burlington N. Santa Fe Corp. v. Anderson*, 959 F. Supp. 1288, 1295 (D. Mont. 1997); *CSX Transp., Inc. v. Georgia Public Service Comm’n*, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996) (noting extraordinary breadth of § 10501(b)); *Burlington N. R.R. Co. v. Page Grain Co.*, 545 N.W.2d 749 (Neb. 1996). This is consistent with longstanding federal preemption of the field of rail transportation, leaving no room for state causes of action. *See Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981) (“*Kalo Brick*”); *Modin v. New York Central Co.*, 650 F.2d 829, 834-35 (6<sup>th</sup> Cir. 1981) (ICA preemption of damage claim under state insurance law). Moreover, even those aspects of rail transportation that are not affirmatively regulated by the STB remain subject to the preemptive effect of section

10501(b), *Alliance Shippers, Inc. v. S. Pac. Transp. Co.*, 858 F.2d 567 (9<sup>th</sup> Cir. 1988); *G&T Terminal Packaging Co. v. Consolidated Rail Corporation*, 830 F.2d 1230, 1233-35 (3<sup>rd</sup> Cir. 1987); *Consolidated Rail Corporation - Declaratory Order - Exemption*, 1 I.C.C.2d 895 (1986).

TSR has sought a declaratory order from the Court to determine which party may salvage and sell the Rail Assets, in essence asking the Court to interpret a contract that exists in one form under state law. However, the remedy sought by TSR—treating the Lease as a state law contract and applying state law principles to declare that it can perform this salvaging—is preempted or, at the very least, premature because MEC’s Rights have not been abandoned, the Western Segment is still subject to STB jurisdiction and a remedy under the ICA exists.

If TSR were to be allowed to salvage the Rail Assets prior to the Board’s grant of abandonment authority, disabling MEC’s ability to provide rail service, MEC would be prevented from complying with federal law and meeting its common carrier obligation<sup>7</sup> resulting in an illegal de facto abandonment. *Modern Handcraft, Inc. – Abandonment in Jackson County, MO*, ICC Finance Docket No. 29330 (ICC Decided August 19, 1981), pg. 2 (“*Modern Handcraft*”). Since the remedy sought by TSR would effectively abandon the Western Segment, a remedy within the exclusive and plenary jurisdiction of the STB, the cause of action is preempted.

**B. TSR did not seek to abandon the common carrier rights and obligations of MEC in the Notice of Exemption and cannot seek to abandon these rights adversely pursuant to the Notice of Exemption Procedure**

TSR claims that MEC’s Rights with regard to the Western Segment have already been abandoned. *Twin State Railroad Company – Abandonment and Discontinuance of*

<sup>7</sup> See generally 49 U.S.C. §§ 10101, 10742, 11101, 11121, and 11122.

*Service – In Caledonia and Essex Counties, VT*, STB Docket No. AB-862 (Sub No. 0X), *Request for Clarification*, Dated September 1, 2005 (the “Request for Clarification”), Argument; *See also the Decision*, and therefore, the Board’s jurisdiction has been terminated allowing the Court to hear TSR’s state law causes of action with respect to the Lease. TSR’s reliance on the Decision is misplaced.

First, upon review of TSR’s Verified Notice of Exemption seeking abandonment and discontinuance of service, it is clear that TSR sought to abandon and discontinue its own service on the Western Segment, but did not seek to abandon, adversely or otherwise, MEC’s Rights. Furthermore, even if it were TSR’s intention to pursue adverse abandonment, it could not achieve that result pursuant to the “Out-of-Service Rail Line” Exemption procedure contained in 49 C.F.R. § 1152.50 (“Notice of Exemption Procedure”) because an adverse abandonment proceeding may only be brought before the Board in the form of a formal application.

Finally, even if TSR were allowed to achieve adverse abandonment by the Notice of Exemption Procedure, the Decision imposed several conditions upon TSR’s authority. These conditions prevent TSR’s ability to consummate its authority until the conditions are met. Therefore, until consummation is achieved, jurisdiction over the proceeding remains with the Board pursuant to the preemptive effect of § 10501(b).

It is abundantly clear throughout the Notice of Exemption that TSR only intended to abandon and discontinue its service on the Line and, in fact, only sought permission to do so. Plainly, TSR recognized that the only interest it held was one of a lessee, *see* the Notice of Exemption, pg. 2 (“[TSR], which since 1984, has *operated* the [Western Segment] pursuant to a long-term lease agreement with MEC” (*emphasis added*)), and

therefore, could only abandon and discontinue its own operations, not the Rights of MEC, unless it sought an adverse abandonment. Furthermore, the Notice of Exemption is completely void of even an inclination that TSR intended to adversely abandon MEC's rights in the Western Segment.

For example, if one were to look only at the caption provided by TSR in the Notice of Exemption, which states, "Twin State Railroad Company – Abandonment and Discontinuance of *Service* in Caledonia and Essex Counties, Vermont" (*emphasis added*), MEC is not even mentioned. It is apparent that TSR simply wished to abandon and discontinue its operation on the Western Segment, not abandon MEC's interest in the Line thereby removing it from the interstate rail network. Typically, the caption for an adverse abandonment application (1) states the name of the rail carrier the adverse abandonment is being sought against; (2) states the rail line or the location of the rail line the party is seeking to adversely abandon; and, most importantly, (3) that the application is for adverse abandonment.<sup>8</sup>

Furthermore, Section 2 of the Notice of Exemption, entitled "Relief Sought – 49 C.F.R. 1152.22(a)(3)," provides that TSR "seeks authority to abandon and discontinue service over the [Western Segment.]" Again, neither MEC nor a claim for relief in the form of adverse abandonment is mentioned. Other than an extensive recitation of the terms of the Lease, pursuant to which TSR claims it may "exercise it[] contractual rights ... to abandon and discontinue service over the Subject Line,"<sup>9</sup> TSR does not discuss

<sup>8</sup> See generally *Yakima Interurban Lines Association - Adverse Abandonment – In Yakima County, WA*, STB Docket No. AB-600 (Decided November 18, 2004).

<sup>9</sup> This analysis is particularly confusing since the authority to abandon and discontinue rail lines is governed exclusively by the Board pursuant to 49 U.S.C. § 10501(b) and § 10903, not by rights conferred in any contract.

MEC's rights in the Line let alone provide a basis for their abandonment, adversely or otherwise.

Since TSR did not seek to adversely abandon MEC's Rights in its proceeding before the Board, the Decision cannot and did not grant TSR the authority to do so.

Moreover, as outlined below, TSR may not seek to adversely abandon the Western Segment pursuant to the Notice of Exemption Procedure because an adverse abandonment proceeding must be brought before the Board in the form of a formal application.

49 U.S.C § 10903 provides that a rail line cannot be abandoned until the Board finds that public convenience and necessity ("PCN") require or permit abandonment. 49 U.S.C. § 10903(1995). *See also Exemption of Out of Service Rail Lines*, 47 Fed. Reg. 13538 (1982) ("*FR Notice*"). To obtain abandonment authority, the party seeking such authority must submit an application with the information contained in 49 C.F.R. § 1152.22 (the "Abandonment Requirements") to the Board. The Board determines the merits of the abandonment by balancing the need of shippers and the community for continued rail service against the financial burden on the railroad of continuing to operate the line. *FR Notice* at 13538.

Further, section 10502 provides the Board with the power to exempt any of the Abandonment Requirements if the Board finds that such an application is not necessary to carry out the transportation policy of section 10101 and either (1) the abandonment is of limited scope or (2) full compliance with the Abandonment Requirements in the application is not necessary to protect shippers from the abuse of market power. 49 U.S.C. § 10502 (1995). The Board may exercise this power pursuant to an individual

petition or, alternatively, the Board may exempt an entire class of transactions or persons from the Abandonment Requirements. *FR Notice*, 13539.

The Notice of Exemption Procedure is an example of the latter. There, the Board exempted all “out-of-service rail lines”<sup>10</sup> from the Abandonment Requirements and implemented the regulations at 49 C.F.R. §1152.50 to govern the abandonment of an out-of-service rail line. *See Exemption of Out of Service Rail Lines*, ICC Ex Parte No. 274 (Sub No. 8) (Decided June 3, 1983), 366 I.C.C. 885 (1983) (“*ICC Notice*”). Unlike exemption pursuant to an individual petition, however, the Notice of Exemption Procedure is only available to the railroad who owns the line. *ICC Notice*, pg 4.

Typically, an abandonment proceeding is brought before the Board by the rail carrier who owns the line that is sought to be abandoned. However, a third-party may seek authority from the Board to abandon the Rights of the rail carrier on a line adversely or without the consent of said carrier - known as an adverse abandonment. *See Modern Handcraft; Baltimore and Annapolis Railroad Company – Abandonment of Operations Between Clifford Junction, Baltimore City and Annapolis, in Baltimore and Anne Arundel Counties, Maryland*, ICC No. AB-71 (Decided May 26, 1976), 348 I.C.C. 678 (“*Baltimore and Annapolis*”); and *Thompson, et al. v. Texas Mexican Ry. Co.*, 328 U. S. 134, 66 S.Ct. 937 (1946) (“*Thompson*”).

Therefore, every request for Board approval to abandon and/or discontinue rail service falls, generally, into one of four categories: a formal application filed under 49 C.F.R. § 1152.22; a petition for exemption filed under the 49 U.S.C. § 10502 exemption procedure; the Notice of Exemption Procedure; or an adverse abandonment application,

<sup>10</sup> “Out of service lines include those lines where there may still be overhead traffic, so long as there has been no traffic originating or terminating on the line for at least 2 years.” *Exemption of Out of Service Rail Lines*, ICC Ex Parte No. 274 (Sub No. 8) (Decided June 3, 1983), 366 I.C.C. 885 (1983), pg. 2.

which must be made in the form of a formal application. *See Policy Statement: Maps in Abandonment Proceedings*, Ex Parte No. 274 (Sub No. 21) (Decided April 15, 1991), pg. 1 and n. 3.

TSR may claim that it sought authority to adversely abandon MEC's Rights in the Western Segment by filing the Notice of Exemption. However, the adverse abandonment process is not as simple as TSR would like. First, an adverse abandonment proceeding must be brought before the Board in the form of a "formal abandonment application [with] an opportunity for hearing" where PCN can be evaluated. *Wisconsin Department of Transportation – Abandonment Exemption*, ICC Finance Docket No. 31303 (Decided: November 23, 1988) ("*WisDot*"), pg. 2. *See also Massachusetts Bay Transportation Authority – Exemption – Discontinuance of Service in Arlington, Bedford and Lexington, MA*, ICC Finance Docket No. 31269 (Decided: August 22, 1990); *City of Colorado Springs and Metex Metropolitan District – Petition for Declaratory Order – Abandonment Determination; The Denver and Rio Grande Western Railroad Company – Petition for Declaratory Order – Spur Track Determination*, ICC Finance Docket Nos. 31271 and 31230 (Decided March 22, 1989), pr. 3 ("[A]ny adverse abandonment request must be made in the context of an abandonment application.").<sup>11</sup>

<sup>11</sup> An adverse abandonment is essentially a "forced abandonment." *WisDot* at 3. "Traditional abandonment authority is permissive[.]" *Id.* The Board's exemption power, found in Section 10502, may "only be used to exempt transactions or services from the provisions of the Interstate Commerce Act; it [can]not be used affirmatively to impose new regulation." *Id. citing Brae Corp. v. United States*, 740 F.2d 1023, 1056-1057 (D.C. Cir. 1984) ("*Brae*"). More particularly, the Board's "exemption power is to be used to alleviate regulatory requirements that burden the regulated entity [in order] to permit carriers to do that for which they would otherwise need prior [Board] approval." *Id. citing Brae*. The Board's exemptive power does not authorize it to require a carrier to take a particular action against its will. If granted as an adverse abandonment, the Notice of Exemption would relieve MEC of its Rights, an affirmative action by the Board. *Id.* The Notice of Exemption seeks the Board's authority to force MEC to abandon its Rights in the Line, such authority would be clearly coercive and therefore regulatory, the kind and nature of which was proscribed by the court in *Brae*. *Id.* The Notice of Exemption would not lessen the Board's authority, "but would expand it to permit [the Board] to abandon the [Western Segment] without requiring [it] to adhere to the provisions of the abandonment statute or [the Board's] implementing regulations. *Id.*

Second, “only the railroad owning the [Line] may use the [Notice of Exemption Procedure]” to abandon a line. *ICC Notice*, pg. 4. As stated above, by its own admission, the only interest TSR holds is one of a lessee, *see* the Notice of Exemption, pg. 2. It does not own the Line. Accordingly, the Notice of Exemption cannot and did not achieve adverse abandonment authority and the STB retains jurisdiction over the matter.

**C. Jurisdiction over this matter remains with the Board until the conditions imposed by the Decision are met.**

Even if the Decision had granted adverse abandonment authority, this authority would not be effective until all conditions imposed by the STB have been satisfied and the carrier seeking such authority has consummated the transaction. *Maine Central RR Co.—Abandonment Exemption—In Androscoggin Cty, ME*, STB Docket No. AB-83 (Sub-No. 16X), (STB Served September 14, 2000); 49 C.F.R. § 1152.29(e).

Accordingly, the Western Segment continues to be subject to STB jurisdiction.

**D. TSR’s state law remedies are preempted until the Western Segment is abandoned.**

Neither TSR nor MEC have received abandonment authority from the STB, therefore, the Western Segment must remain intact and the salvage and sale of the assets cannot occur until the interests of both parties have been abandoned under 49 U.S.C. § 10903. “Only after abandonment is authorized and exercised would anyone be free to salvage the rail, ties and physical assets in what had been [the] rail line.” *SF&L Railway, Inc. – Acquisition and Operation Exemption – Toledo Peoria and Western Railway Corporation Between La Harpe and Peoria, IL*, STB Finance Docket No. 33995; *Kern W. Schumacher and Morris H. Kulmer – Continuance in Control Exemption – SF&L*



*Railway, Inc.*, STB Finance Docket No. 33996; *SF&L Railway, Inc. – Abandonment Exemption – In Hancock, McDonough, Fulton and Peoria Counties, IL*, STB Docket No. AB 448 (Sub No. 2X); *Western Illinois Railway Company – Acquisition Exemption – Toledo, Peoria and Western Railway Corporation*, STB Finance Docket No. 34282 (Decided February 6, 2003) (“*SF&L Railway*”). The ICA provides TSR’s only remedies at this point because, until the Western Segment is abandoned, it remains under the jurisdiction of the STB and subject to preemption pursuant to 10501(b). Section 10903 provides that “[a]ny rail carrier providing transportation subject to the jurisdiction of the STB may abandon any part of its railroad lines if the STB finds that the present or future public convenience and necessity require or permit the abandonment. 49 U.S.C. § 10903(d)(1995). The authority granted to the STB under section 10903 is exclusive and plenary. *Kalo Brick*, 450 U.S. at 320. The STB’s authorization of abandonment brings its regulatory mission to an end and allows for the pursuit of state law causes of action. *Hayfield Northern Railroad Company, Inc. v. Chicago and Northwestern Transportation Company*, 467 U.S. 622, 633-34, 104 S.Ct. 2610 (1984) (“*Hayfield*”).

The owner of a rail line subject to the regulatory authority of the STB assumes a common carrier obligation that continues until that obligation is extinguished through the exercise of abandonment and/or discontinuance authority under section 10903. *SF&L Railway* at 3. *See also Hayfield* at 628. The owner of a rail line, similar to any other property owner, may lease the line to another carrier—though any such lease is without force and effect absent STB approval and authorization under 49 U.S.C. § 11323. Upon such STB approval, the lessee assumes a common carrier obligation on the line. Similar

to the owner of the rail line, the lessee cannot relieve itself of its common carrier obligation without STB approval.

There is an important distinction between the abandonment of a rail line and the discontinuance of service. *Preseault v. Interstate Commerce Commission*, 110 U.S. 1, 6, n.3, 110 S.Ct. 914 (1990). Once a carrier abandons a rail line pursuant to authority granted by the STB, the line is no longer a part of the national transportation system. *Id.* In contrast, the authority to discontinue a rail line allows a railroad to cease operating a line for an indefinite period of time while preserving the rail corridor for possible reactivation of service in the future. *Id.*

Importantly, for the purposes of this matter, the carrier who owns a line does not relieve itself of its common carrier obligation simply by leasing a rail line to another carrier. *Wisconsin Central Ltd. v. Surface Transportation Board*, 112 F.3d 881, 888 (7<sup>th</sup> Cir. 1996) (“*Wisconsin Central*”) (“Rather, once the lessee ceases operations, the duty to provide service reverts to the lessor and remains with it unless and until the [STB] grants permission to abandon the line.”) *citing Meyers v. Famous Realty, Inc.*, 271 F.2d 811, 814 (2<sup>nd</sup> Cir. 1959) (“*Meyers*”). *See also ISTR Corporation – Lease and Operation Exemption – Central of Georgia Railroad Company*, STB Finance Docket No. 31449 (Decided May 18, 1989), pg. 2, n. 2 (Lessor retains a residual common carrier obligation to resume operations should Lessee curtail operations).

Accordingly, the Western Segment continues to be subject to STB jurisdiction on at least two levels. First, TSR has not met the conditions imposed by the STB and therefore cannot consummate whatever authority was granted by the Board. *See Twin State* at 2. Second, MEC, as the owner of the Western Segment with a residual common

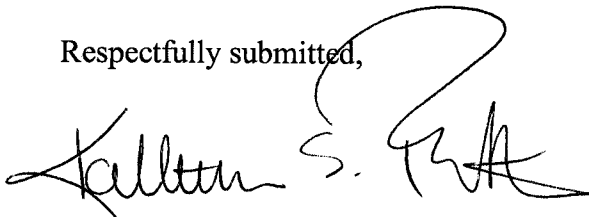
carrier obligation, has not received—or even sought—abandonment and discontinuance authority from the STB. Reply at 3-4.

### III. CONCLUSION

Therefore, the broad preemption provision of section 10501(b) and the STB's exclusive oversight of the abandonment and discontinuance of rail lines, clearly indicate that TSR's state law cause of action is preempted.

September 20, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Katherine E. Potter", with a large, stylized flourish extending from the end of the signature.

Katherine E. Potter  
Iron Horse Park  
North Billerica, MA 01862  
(978) 663-1215  
kpotter@guilfordrail.com

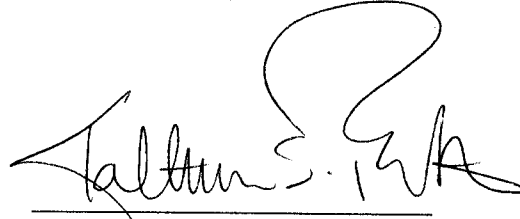
*Counsel for  
Maine Central Railroad Company*

# **CERTIFICATE OF SERVICE**

I hereby certify that true copies of the foregoing documents were served on September 20, 2005, by electronic mail upon:

Leonard M. Singer, Esq.  
Craighead Glick LLP  
277 Dartmouth Street  
Boston, Massachusetts 02116

Dated: September 20, 2005

A handwritten signature in black ink, appearing to read "Katherine E. Potter", written over a horizontal line.

Katherine E. Potter

# **EXHIBIT A**

LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT ("Agreement") dated as of the 1st day of March, 1984, by and among MAINE CENTRAL RAILROAD COMPANY, a Maine corporation ("MEC"), TWIN STATE RAILROAD CORPORATION, a Vermont corporation ("TSR"), and LAMOILLE VALLEY RAILROAD COMPANY, a Vermont corporation ("LVRC").

WITNESSETH:

WHEREAS, MEC, LVRC, the State of Vermont ("Vermont") and Guilford Transportation Industries, Inc. ("Guilford"), the owner of all of the outstanding common stock of MEC, have executed and delivered a Settlement Agreement dated as of November 1, 1983 (the "Settlement Agreement"), pursuant to which they have agreed to resolve, as of the Effective Date (as defined below), certain disputes arising in connection with the acquisition by Guilford of control of Boston and Maine Corporation ("B&M"); and

WHEREAS, the Settlement Agreement provides that MEC and LVRC will enter into an agreement for the operation of the line of railroad of MEC from Whitefield, New Hampshire to St. Johnsbury, Vermont by LVRC; and

WHEREAS, TSR has been organized as a wholly-owned subsidiary of Northern Vermont Corporation, which is also the owner of all of the outstanding stock of LVRC, to operate the Line (as defined below) as the designee of LVRC;

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises and covenants set forth herein and intending to be legally bound, hereby agree as follows:

I. GRANT OF AUTHORITY

1.01 In consideration of the payment, as of the Effective Date, of the sum of \$200,000 by TSR to MEC, MEC hereby leases and grants to TSR the right to use and operate, during the term of this Agreement and subject to the provisions of this Agreement and to the limitations set forth in Sections V and VI below, the line of railroad of MEC between the east MEC yard limit sign at approximately Mile Post P 103, Whitefield, New Hampshire and the west end of the MEC main track at approximately Mile Post 131.15, St. Johnsbury, Vermont, except a parcel of real property consisting of approximately 9.2 acres at South Lunenburg, Vermont, situated northerly of a line approximately 900 feet long lying 50 feet northerly of and parallel to the monumented baseline of MEC between the Connecticut River and Lunenburg State Aid Highway

No. 1. TSR shall have the right to use and operate the line of railroad and all appurtenant facilities, including tracks, bridges, culverts, signals, fences and buildings, which are used in connection with the operation of the line, all of which shall be referred to in this Agreement as the "Line".

1.02 MEC hereby assigns to TSR all leases, sidetrack agreements, licenses, private crossing agreements and other such agreements in connection with or relating to the Line listed in Appendix A attached hereto. TSR shall have the right on its own behalf to enter into such additional leases, sidetrack agreements, licenses, private crossing agreements or other such agreements in connection with or relating to the Line, subject, however, to the prior written consent of the Chief Engineer of MEC, which consent shall not be unreasonably withheld, and to collect and receive for its own account any rents or payments with respect to all such agreements. TSR shall have the right and responsibility to enter into agreements with states, municipalities or administrative agencies relating to highway grade crossings, highway bridges or grade crossing protection on the Line, subject, however, to the prior written consent of the Chief Engineer of MEC, which consent shall not be unreasonably withheld. MEC shall have and retain the exclusive right, and TSR shall be precluded from



claiming or exercising any right, to enter into agreements, so long as any such agreements do not adversely affect the operation of the Line, to convey the fee interest in any real property constituting part of the Line, to grant an easement affecting the Line or to resolve any taking by eminent domain affecting the Line. Upon termination of this Agreement, TSR shall assign or reassign to MEC all leases, sidetrack agreements, licenses, private crossing agreements and other such agreements in connection with or relating to the Line.

1.03 TSR may request MEC to retire any property on, or portion of, the Line which may no longer be required for the performance of the duties of TSR under this Agreement, and MEC shall not unreasonably withhold approval of such requests. TSR may retain for its own account any property recovered or proceeds received incidental to any such retirement, but retirement accounting shall be performed by MEC.

## II. COVENANTS OF LVRC

TSR hereby covenants and agrees as follows:

2.01 As of the Effective Date, TSR shall pay to MEC the sum of \$200,000.

2.02 During the term of this Agreement, TSR shall operate the Line and shall provide train service which will be equal in all respects, including frequency, reliability and speed, to the service presently provided on the Line by MEC or such other manner of service as may be warranted by traffic levels and operating conditions as they may exist from time to time. TSR acknowledges that presently MEC provides service upon the demand of customers six days per week. TSR shall provide all locomotives, personnel and any other equipment (except that cars for loading shall be provided as stated in Section IV below) necessary in order to provide such service.

2.03 TSR shall offer to employ one MEC employee presently assigned to maintenance-of-way duties on the Line.

2.04 TSR shall assume and bear all costs related to its operation of the Line.

2.05 TSR shall file any returns or reports required by Vermont or New Hampshire in respect of franchise, corporate or income taxes and shall pay any taxes assessed on the basis of the earnings or income of, or operation of the Line by, TSR. TSR shall pay (i) 37.5% of the Vermont property and franchise tax, 32 Vermont Statutes Annotated, Chapter 211, §§ 8211-8286, as it or a similar tax law based on the value of

property used for railroad operations may be in effect from time to time, assessed in respect of that portion of the Line which is located in Vermont and (ii) 37.5% of the New Hampshire railroad and public utility tax, 1-A New Hampshire Statutes Annotated, Chapter 82, §§ 1-38, as it or a similar tax law based on the value of property used for railroad operations may be in effect from time to time, assessed in respect of that portion of the Line which is located in New Hampshire, whether any such taxes are assessed against TSR or MEC or both. Except for property taxes to be paid by MEC pursuant to Section 3.02 below and except as provided in the preceding sentence, TSR shall pay any other property taxes assessed on the Line.

2.06 TSR shall, at its own expense, maintain the Line in good condition and repair so that freight train operations can be conducted on the Line as warranted by traffic levels in a safe, efficient and economical manner and in compliance with all federal and state laws and regulations. Any property or materials used by TSR to replace or repair any property or materials in the Line shall be of equal or better quality compared to the property or materials so replaced or repaired.

2.07 TSR shall indemnify and save MEC, its parent and its officers, agents and employees harmless from and

against all liabilities, claims, charges, costs and expenses of whatever nature arising from or in connection with the use, operation or maintenance of the Line by TSR.

2.08 TSR shall, at all times during the term of this Agreement, maintain, from insurers approved by MEC, which approval shall not be unreasonably withheld, the following types and amounts of insurance coverage:

(a) insurance against loss or damage to property, including without limitation property of MEC, cargo and rolling stock, and against injury or death to persons, including without limitation employees of MEC, arising or incurred in connection with the operation, use or maintenance of the Line, in minimum amounts of (i) \$1,000,000 for injury or death of any person and \$2,000,000 for injury or death arising out of any occurrence and (ii) \$1,000,000 for any loss of or damage to property and \$2,000,000 for loss or damage arising out of any occurrence, in each case subject to a deductible not in excess of \$25,000; and

(b) insurance against loss or damage by fire and against loss or damage by other risks now or hereafter embraced by the terms "extended coverage" and "vandalism and malicious mischief" to any bridges located on the Line in an amount of \$1,000,000 for any occurrence, subject to a deductible not in excess of \$25,000.

TSR shall maintain the insurance described in subsection 2.08(a) above at its sole expense and shall pay 37.5% of the cost of the insurance described in subsection 2.08(b) above.

### III. COVENANTS OF MEC

MEC hereby covenants and agrees as follows:

3.01 MEC shall pay TSR \$300 for each loaded car (but not including any MEC company material cars or MEC non-revenue equipment) handled by TSR on the Line. On January 1, 1985, and on January 1 of each succeeding year this Agreement is in force and effect, the amount paid by MEC to TSR for each loaded car so handled by TSR shall be increased or decreased, as the case may be, by multiplying \$300 by a fraction, the numerator of which shall be the "Labor, Fuel and Materials and Supplies Combined" portion of the Railroad Cost Recovery Index of the Association of American Railroads and the denominator of which

shall be such Index as of January 1, 1984. If the Association of American Railroads ceases publication of such Index, the parties hereto shall utilize such other index, for the purpose of adjusting the payment for each loaded car, that fairly reflects the increased or decreased costs of labor, fuel and materials and supplies incurred in operating railroads in the United States. No payment shall be due from MEC to TSR for the handling by TSR of empty cars which are loaded or made empty on the Line. TSR shall bill MEC after the conclusion of each month. Such bills shall show the car number and the date or dates of handling for each loaded car for which payment is requested. Within 15 business days after the receipt of any such bill, MEC shall make the payment due TSR.

3.02 MEC shall file any returns or reports required by Vermont or New Hampshire in respect of franchise, corporate or income taxes and shall pay any taxes assessed on the basis of the income or earnings of MEC in respect of the Line. MEC shall pay (i) 62.5% of the Vermont property and franchise tax, 32 Vermont Statutes Annotated, Chapter 211, §§8211-8286, as it or a similar tax law based on the value of property used for railroad operations may be in effect from time to time, assessed in respect of that portion of the Line which is located in Vermont and (ii) 62.5% of the New Hampshire railroad

and public utility tax, 1-A New Hampshire States Annotated, Chapter 82, §§1-38, as it or a similar tax law based on the value of property used for railroad operations may be in effect from time to time, assessed in respect of that portion of the Line which is located in New Hampshire, whether any such taxes are assessed against MEC or TSR or both. MEC shall pay property taxes assessed on the parcel of real property described in Section 1.01 above as not being subject to this Agreement.

3.03 MEC shall pay 62.5% of the cost of the insurance described in subsection 2.08(b) above.

#### IV. OPERATION AND TRAFFIC

4.01 TSR shall handle cars on the Line for the account of MEC. MEC shall have and retain the exclusive right to deal directly with shippers and receivers regarding traffic moving to or from the Line and to solicit such traffic in the best interests of MEC and the railroad system owned by Guilford (hereinafter referred to as the "Guilford system"). MEC shall provide all station agency functions related to the operation of the Line and shall furnish TSR such information as may be necessary for TSR to provide service to customers on the Line. MEC shall provide TSR with instructions concerning delivery

locations for traffic moving to or from the Line, and TSR shall comply with such instructions. TSR shall furnish MEC weekly with copies of each daily "Conductor's Train Report" completed with information relating to cars handled on the Line during each week. MEC shall have the right, at reasonable times, to review and obtain copies of any records of TSR or LVRC relating to traffic handled by TSR on the Line.

4.02 TSR shall first use Guilford system cars supplied to TSR for loading for any shippers located on the Line. To the extent that Guilford system cars are not so available, TSR may provide TSR or LVRC cars for loading. In the event that neither Guilford system cars nor TSR or LVRC cars are available, TSR shall use cars supplied to it by any Guilford system railroad.

4.03 TSR shall operate the Line under its own rules, except that TSR shall incorporate into its operating instructions MEC Time Table Special Instructions as they may be pertinent to operations of the Line, including MEC Time Table No. 2, dated April 11, 1982, pages 2 through 7 under Sections (Rules) 33a, 33b, 93, 98, 110 and 695.



V. DEFAULTS BY LVRC AND REMEDIES OF MEC

5.01 The following events or occurrences shall constitute defaults by TSR under this Agreement:

(a) the failure or inability of TSR to provide service on the Line, except when such failure or inability is caused by an event or occurrence such as an act of God, vandalism, strike, or order of a court or other governmental authority which (i) is not attributable, directly or indirectly, to any act or failure to act by TSR and (ii) cannot be cured by TSR without unreasonable delay or expense;

(b) the failure to maintain the Line in accordance with the standard established in Section 2.06 above;

(c) the failure to pay any of the costs and expenses to be paid by LVRC pursuant to Section 2.04 or Section 2.05 above; or

(d) the failure to comply with or to perform any other covenant or agreement undertaken by TSR pursuant to this Agreement.

5.02 In the event that MEC gives TSR and LVRC written notice of the occurrence of any default under this Agreement and TSR or LVRC, pursuant to Section XII below, does not cure any such default within 30 days after such notice, then MEC may, by further written notice to TSR and LVRC, with a copy to Vermont, terminate the rights and obligations of TSR and LVRC under this Agreement.

5.03 Notwithstanding any other provision of this Agreement, in the event that TSR fails to provide service in the manner required by Section 2.02 above, MEC may, at its option, provide service on the Line itself or through a carrier designated by MEC.

#### VI. SUBSTITUTION OF OPERATOR

6.01 The rights and obligations of TSR and LVRC under this Agreement shall terminate, but the Agreement shall remain in full force and effect, upon the occurrence of either of the following two events:

(a) provision of notice by MEC to TSR and LVRC of a default, as provided in Section 5.02 above, which TSR or LVRC has failed to cure within 30 days after notice of such default; or

(b) provision of notice by Vermont to MEC and LVRC to the effect that LVRC is in default under its lease with Vermont concerning the operation of the line of railroad between Swanton, Vermont and St. Johnsbury, Vermont or to the effect that LVRC has failed to renew such lease.

In either event, Vermont may, by notice to MEC and to TSR and LVRC, designate a new operator of the Line in place of TSR.

6.02 Subject to the approval of Guilford and the approval of or exemption by any regulatory agency which may have jurisdiction over such matters, any new operator so designated by Vermont shall assume all of the rights and obligations of TSR, except the rights set forth in Section VII below, under this Agreement.

#### VII. TERMINATION BY TSR

TSR may, at its option, terminate this Agreement (i) for any reason within two years after the Effective Date or (ii) if it handles less than 1,100 carloads on the Line in any calendar year during the period beginning on the second anniversary of the Effective Date and ending on December 31, 1988. If TSR so terminates this Agreement, or if the Agreement

terminates pursuant to the last sentence of Section VIII below, MEC shall pay TSR the sum of \$200,000; provided, however, that MEC shall have no obligation to pay any amount to TSR if the rights and obligations of TSR are terminated pursuant to Section VI above.

VIII. TERM

The initial term of this Agreement shall be from the Effective Date through December 31, 1988. At its option, TSR may renew this Agreement for a maximum of four 10-year periods subsequent to December 31, 1988. Notwithstanding any other provision of this Agreement, it shall terminate and be of no further force and effect as of June 30, 1984, unless such date is extended by MEC, in the event that Vermont has not provided assurances satisfactory to MEC by such date to the effect that Vermont has obtained the authority necessary to fulfill the obligations assumed by Vermont with respect to certain public structures and grade crossings in Vermont pursuant to paragraph 5 of the Settlement Agreement.

IX. NOTICES

All notices, requests and demands to or upon the parties hereto shall be deemed to have been given or made when deposited in the United States mails, postage prepaid, addressed as follows:

To:

Twin State Railroad Corporation  
Stafford Avenue  
Morrisville, Vermont 05661

with a copy to:

Robert A. Gensburg, Esq.  
Gensburg & Axelrod  
101 Eastern Avenue  
P.O. Box 189  
St. Johnsbury, Vermont 05819

To:

Lamoille Valley Railroad Company  
Stafford Avenue  
Morrisville, Vermont 05661

with a copy to:

Robert A. Gensburg, Esq.  
Gensburg & Axelrod  
101 Eastern Avenue  
P. O. Box 189  
St. Johnsbury, Vermont 05819

To:

Maine Central Railroad Company  
242 St. John Street  
Portland, Maine 04102

with copies to:

James E. Howard, Esq.  
Kirkpatrick, Lockhart, Johnson & Hutchison  
1500 Oliver Building  
Pittsburgh, Pennsylvania 15222

and

Guilford Transportation Industries, Inc.  
171 Orange Street  
New Haven, Connecticut 06510

X. NO WAIVER; CUMULATIVE REMEDIES

No failure to exercise, and no delay in exercising on the part of any party of, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power, or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the parties hereunder are cumulative and not exclusive of any rights or remedies provided by law, and all such rights and remedies may be exercised singly or concurrently.

XI. ASSIGNMENT

This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. TSR shall not assign this Agreement or any portion hereof except upon the prior, written consent of MEC.

XII. GUARANTY BY LVRC

LVRC hereby (i) guaranties the performance by TSR of its duties, covenants and obligations under this Agreement and (ii) if TSR fails to perform such duties or obligations or to fulfill such covenants or if there is a default by TSR

hereunder, consents to the enforcement by MEC against LVRC of any such duties, covenants and obligations and to the exercise of any rights, powers, remedies or privileges available hereunder or at law.

XIII. EFFECTIVE DATE

This Agreement shall become effective (the "Effective Date") only upon the occurrence of both of the following conditions precedent:

(a) the litigation by LVRC, Vermont and Eastern Magnesia Talc Company relating to the acquisition of B&M, including the matter relating to LVRC remanded to the Interstate Commerce Commission ("ICC") pursuant to Lamoille Valley Railroad Co. v. ICC, 711 F.2d 295 (D.C. Cir. 1983), shall have been terminated and dismissed with prejudice by the ICC and any courts having jurisdiction over such matters; and

(b) this Agreement, the Settlement Agreement and any transactions contemplated hereby or thereby shall have received such approvals, if any, as may be required by the ICC, Vermont or New Hampshire or

shall have been exempted from approvals, in each case by orders which have become final.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered on the day and year first above written.

Attest:

*[Signature]*

MAINE CENTRAL RAILROAD COMPANY

By *John F. Gentry*

Attest:

*Emily M. Prescott*

LAMOILLE VALLEY RAILROAD COMPANY

By *Robert A. Gensburg*  
Robert A. Gensburg  
President

and  
By *Edward A. Lewis*  
Edward A. Lewis  
General Manager

Attest:

*Emily M. Prescott*

TWIN STATE RAILROAD  
CORPORATION

By *Robert A. Gensburg*



AGREEMENTS - WHITEFIELD, N.H. TO ST. JOHNS BURY, VT.

<u>Name</u>	<u>Description</u>	<u>Agreement Date</u>	<u>Annual Rent</u>
<u>Whitefield, N.H.</u>			
Hennessey, Herbert	Land Lease	5/17/65	10.00
Hutchins, Roger W.	" "	12/10/79	45.00
McIntyre, Douglas	" "	5/ 1/60	10.00
Stiles, Robert	" "	5/ 1/70	108.00
Way, Ralph A.	" "	8/ 5/76	25.00
New England Tel & Tel Co.	Wires	12/ 1/46	15.00
New England Tel & Tel Co.	U.G.Cable	12/20/61	38.00
New England Tel & Tel Co.	Aerial Cable	12/10/71	-
Public Service Co. of N.H.	115 KV Line	5/27/68	65.00
Bray, E. C.	Water Pipe	10/20/28	-
Town of Whitefield	Sewer	8/16/95	-
Town of Whitefield	Sewer	7/25/06	-
Town of Whitefield	Sewer	6/16/23	-
Town of Whitefield	Sewer	9/ 5/30	-
Town of Whitefield	Sewer	5/ 6/32	-
Whitefield Mfg. Co.	Water Pipe	6/25/12	-
<u>Dalton/Scotts, N.H.</u>			
White, C. N.	Post Brook	4/28/10	-
New England Tel & Tel Co.	Wires	12/ 1/46	15.00
New England Tel & Tel Co.	Cables	4/18/73	-
New England Tel & Tel Co.	Wires	5/22/74	25.00
New England Tel & Tel Co.	Cables	9/ 1/75	-
New England Tel & Tel Co.	Wires	9/15/75	25.00
Public Service Co. of N.H.	110,000 Volt Line	3/ 8/48	65.00
Public Service Co. of N.H.	33 KV Line	8/25/53	40.00
Public Service Co. of N.H.	115 KV Line	9/25/58	65.00
Public Service Co. of N.H.	7200 Volt Line	12/ 1/75	50.00
Twinstare Gas & Elect. Co.	Wires	10/ 6/23	Decree
Morin, George	Water Pipe	10/23/29	-
Cloutier, Leon	Pipe	9/13/26	-
Brooks, George	Temp.Crossing	9/20/73	-
Dorsey, B. S.	Temp.Crossing	4/ 9/81	95.00
White, R. R.	Temp.Crossing	6/ 9/81	95.00
<u>Lunenburg, VT.</u>			
New England Tel & Tel Co.	Wires	8/11/47	45.00
New England Power Co.	Trans. Line	1/21/55	5.00
Central Vt. Public Service	Wires	7/ 1/63	5.00
Smith, O. R.	Sewer	8/28/23	-

<u>Name</u>	<u>Description</u>	<u>Agreement Date</u>	<u>Annual Rent</u>
<u>Gilman, VT.</u>			
Georgia Pacific Corp.	Yard Tracks	1/16/78	Ind. Owned
Georgia Pacific Corp.	8" Water Pipe	8/ 8/22	-
Georgia Pacific Corp.	8" Sewer	7/ 8/24	-
Georgia Pacific Corp.	Steam & Wtr. Pipes	5/22/36	-
Georgia Pacific Corp.	Wtr. & Sewer Pipes	11/25/47	-
Georgia Pacific Corp.	Hopper & Conveyors	11/25/47	-
Georgia Pacific Corp.	Private Crossings	4/20/78	-
Bernard, P.	Water	10/27/23	-
<u>East Concord, VT.</u>			
Ranney, S. C.	1/2" Water Pipe	7/12/16	-
<u>Miles Pond, VT.</u>			
Caldbeck-Cosgrove Corp.	Water Pipe	9/22/22	-
State of Vermont	" "	10/15/68	10.00
Renfrew, E. R.	Foot Crossing	6/10/71	-
<u>No. Concord, VT.</u>			
Copp, Carroll D.	Land Lease	11/ 1/56	-
Copp, Carroll D.	Water Pipe	11/ 1/56	-
Copp, Carroll D.	2" Water Pipe	10/15/69	10.00
Johnson Lumber Co.	3/4" Water Pipe	12/ 7/37	-
State of Vermont	Conduit	3/10/38	-
Central Vt. Public Service	Guy Wire	5/ 8/47	-
<u>Concord, VT.</u>			
Central Vt. Public Service	Wires	7/ 8/49	5.00
New England Tel & Tel Co.	"	4/ 1/48	15.00
New England Tel & Tel Co.	"	12/10/57	15.00
New England Tel & Tel Co.	Guy Wires	12/10/57	15.00
New England Tel & Tel Co.	Aerial Cable	6/15/57	25.00
Hood, H. P. & Sons	Water Pipe	12/ 9/19	-
Lewis, E. C.	Water Pipe	4/23/17	-
Village of Concord	Sewer	9/28/15	-
<u>East St. Johnsbury, VT.</u>			
Congregational Church	Sewer	10/26/21	-
Croteau, Paul	Water Pipe	9/ 1/53	5.00
Lee, H. J.	Sewer	7/18/14	-

<u>Name</u>	<u>Description</u>	<u>Agreement Date</u>	<u>Annual Rent</u>
<u>St. Johnsbury, VT.</u>			
Dolgin, Steven	Land Lease	7/16/79	25.00
Gravelin, Elmer	" "	7/ 1/61	14.00
Judd, Alfonso R.	" "	8/ 1/81	25.00
Lewisburg Chair Co.	" "	4/ 1/61	5.00
Maple Grove, Inc.	" "	3/31/69	135.00
Murphy, Bernard J.	" "	7/29/66	90.00
Peck Co., The	" "	5/ 1/61	75.00
Sangravco, Lawrence, Inc.	" "	9/20/78	25.00
Vermont Salvage Corp.	" "	7/10/61	15.00
Colt Industries, Inc.	Tracks 16 & 18	9/22/66	Ind. Owned
Maple Grove/Peck Co.	Track 5	12/ 5/69	" "
Rossi, Alan D.	Track 10	2/23/81	" "
True Temper Corp.	613 Ft. Track 8	7/11/49	" "
True Temper Corp.	45 Ft. Track 8	9/ 1/49	" "
Vermont Salvage Corp.	250 Ft. Track 14	7/ 1/55	" "
Vermont Salvage Corp.	450 Ft. Track 14	4/ 5/52	" "
Central Vt. Public Service	Wires	7/ 3/47	5.00
Central Vt. Public Service	"	1/20/49	5.00
Central Vt. Public Service	"	11/14/50	5.00
Central Vt. Public Service	"	10/20/59	5.00
Central Vt. Public Service	7200 Volt Line	9/ 8/66	25.00
Central Vt. Public Service	34.5 KV Line	1/12/67	40.00
New England Tel & Tel Co.	Wires	1/ 3/49	15.00
New England Tel & Tel Co.	Aerial Cable	6/17/81	25.00
New England Tel & Tel Co.	Cables	4/15/82	-
New England Tel & Tel Co.	Guy Wires	6/17/82	25.00
Sangravco, Lawrence, Inc.	120 Volt Line	6/15/76	25.00
St. Johnsbury Comm. Tele.	Wires	3/20/67	25.00
Vermont Elect. Power Co.	115 KV Line	4/10/72	150.00
Carpenter, C. W.	1½" Water Pipe	7/ 6/60	-
Colt Industries, Inc.	4" Water Pipe	1/12/66	10.00
Dean, H. C.	Sewer	1/ 2/17	-
Goodrich, R. B.	12" Water Pipe	12/ 5/69	-
Hudson, K. A.	Sewer	5/25/48	-
Maple Grove, Inc.	Pipes	3/31/69	10.00
Murphy, B. J.	6" Sewer	9/16/67	10.00
Passumpsic Tel. Co.	Conduit	9/15/12	-
Passumpsic Tel. Co.	"	7/30/12	-
Potvin, C. F.	Pipes	8/10/82	25.00
Riverside Lumber Co.	Water	12/ 9/15	-
Town of St. Johnsbury	10" C.I. Pipe	5/28/31	-
Town of St. Johnsbury	14" Water Pipe	8/30/34	-
Town of St. Johnsbury	6" Tile Pipe	9/11/34	-
Town of St. Johnsbury	8" Water Pipe	10/15/58	17.00
Town of St. Johnsbury	10" Sewer	5/20/63	10.00
Town of St. Johnsbury	20" Sewer	5/20/63	20.00
Town of St. Johnsbury	3/4" Water Pipe	10/15/66	10.00

## **EXHIBIT B**

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT, made this 1<sup>st</sup> day of November, 1983, by and among Guilford Transportation Industries, Inc. ("Guilford"), a Delaware corporation, Maine Central Railroad Company ("MEC"), a Maine corporation, Lamoille Valley Railroad Company ("LVRC"), a Vermont corporation, and the State of Vermont ("Vermont"), acting through its agency of transportation.

WITNESSETH:

WHEREAS, LVRC and Vermont have opposed the control by Guilford of Boston and Maine Corporation ("B&M"); and

WHEREAS, certain issues raised by Vermont and LVRC are to be considered further by the Interstate Commerce Commission ("Commission") pursuant to a remand in Lamoille Valley Railroad Company v. Interstate Commerce Commission, 711 F.2d 295 (D.C. Cir. 1983); and

WHEREAS, the parties are desirous of resolving the disputes underlying this litigation and entering into certain arrangements pertaining to other related matters;

NOW, THEREFORE, the parties hereto, in consideration of the promises herein made and subject to the terms and conditions herein set forth, mutually agree as follows:

1. Operating Agreement for line between Whitefield and St. Johnsbury. MEC and LVRC will enter into a definitive agreement (the "Operating Agreement") for the operation by LVRC of MEC's line of railroad between Whitefield, New Hampshire and St. Johnsbury, Vermont (the "Line"). In addition to such terms and conditions as MEC and LVRC may deem to be appropriate, the Operating Agreement will contain the substance of the following provisions:

(a) As of the Effective Date (as defined below) of this Settlement Agreement, LVRC will pay MEC \$200,000.

(b) During the term of the Operating Agreement, LVRC or any other operator which may be designated by Vermont will, at its own expense, maintain the Line in good condition and repair so that freight train operations can be conducted on the Line as warranted by traffic levels, in a safe, efficient and economical manner and in compliance with all federal and state laws and regulations.

(c) LVRC or any other operator which may be designated by Vermont will handle all traffic which moves on the Line, whether originating, terminating or overhead, for the account of MEC.

(d) MEC will pay LVRC or any other operator which may be designated by Vermont \$300, subject to adjustment in accordance with the AAR materials index, for each loaded car so handled. There will be no charge for empty cars which are loaded or made empty on the Line.

(e) The service provided by LVRC or any other operator which may be designated by Vermont will be equal in all respects, including frequency, reliability and speed, to the service presently provided on the Line by MEC or as may be warranted by traffic levels and operating conditions from time to time.

(f) During the initial term of the Operating Agreement or any renewal thereof, MEC will retain the right to provide service on the Line; provided, however, that MEC will not exercise such right so long as LVRC or any other operator which may be designated by Vermont provides adequate service.

(g) LVRC or any other operator which may be designated by Vermont will use Guilford system cars for loading for any shippers located on the Line. In the event that such cars are not available, LVRC or any other operator may supply its own cars for loading.

(h) The initial term of the Operating Agreement will end as of December 31, 1988. At its option, LVRC or any other operator which may be designated by Vermont may renew the Operating Agreement for a maximum of four 10-year periods. Notwithstanding any other provision of the Operating Agreement, it will terminate as of June 30, 1984, unless such date is extended by Guilford, in the event that Vermont has not obtained the authority necessary to fulfill the obligations assumed in paragraph 5 below.

(i) Within two years after the Effective Date, LVRC may, at its option, terminate the Operating Agreement. During the period beginning on the second anniversary of the Effective Date and ending as of December 31, 1988, LVRC may, at its option, terminate the Operating Agreement if it handles less than 1,100 carloads on the Line in any calendar year. If LVRC so terminates the Operating Agreement prior to January 1, 1989, MEC will pay LVRC \$200,000.

(j) LVRC's rights and obligations under the Operating Agreement will terminate in the event that (1) Vermont has advised LVRC and Guilford that LVRC has been in default under the terms of its lease to operate the line between St. Johnsbury, Vermont and Swanton, Vermont or has failed to renew its lease to operate that line or (2) Guilford or MEC has given LVRC notice that LVRC has breached any of its covenants, as specified in the Operating Agreement, such as failing to or becoming unable to provide service on the Line, and such breach has not been cured within 30 days of such notice. In the event that LVRC's rights and obligations under the Operating Agreement are so terminated, Vermont may designate a new operator in accordance with paragraph 2 below.

(k) Upon termination of the Operating Agreement, MEC or its designee will provide such service on the Line as may be warranted by traffic levels and operating conditions.

2. Subsequent operator. In the event that, during the initial term of the Operating Agreement or any renewal thereof,



LVRC is declared by Vermont to be in default of its lease to operate the line between St. Johnsbury, Vermont and Swanton, Vermont, LVRC fails to renew its lease with Vermont with respect to the operation of that line or Guilford or MEC declares a default under the Operating Agreement, Vermont may, at its option, designate, subject to any regulatory approvals or exemptions that may be required, another operator to replace LVRC under the Operating Agreement; provided, however, that any such operator must be approved by Guilford, but such approval shall not be unreasonably withheld. The operator so designated by Vermont and approved by Guilford shall thereupon assume the rights and obligations of LVRC under the Operating Agreement. To the extent possible, Vermont will require any new operator to begin its operations as soon as LVRC ceases its operation in order to avoid interim operations by MEC or any other Guilford subsidiary. Vermont will indemnify and hold Guilford and MEC harmless for any interim operation of the Line which may become necessary by MEC or any other Guilford subsidiary by reason of the exercise by Vermont of the option granted under this paragraph 2.

3. Labor protection. Any labor protection costs in respect of MEC employees arising in connection with the operation of the Line by LVRC shall be borne by Guilford, and neither LVRC nor Vermont shall have any responsibility or obligation to pay any such costs. LVRC will use its best efforts to minimize any such costs. Such efforts will include offering to employ one of the MEC maintenance of way employees presently assigned to the Line.

4. Mountain Division. Neither Vermont nor LVRC will object to or oppose in any way either an attempt by MEC to abandon its line of railroad known as the "Mountain Division" between Portland, Maine and Whitefield, New Hampshire or any change or alteration with respect to service on the Mountain Division.

5. Bridges and grade crossings in Vermont. As of the effective Date or the date as of which Vermont obtains the authority required to fulfill its obligations set forth in this paragraph (if that occurs after the Effective Date), and continuing until the termination of the Operating Agreement, Vermont will assume all obligations for any public highway structures over Guilford system lines in Vermont and will maintain the surface (but not signals or track substructure) of any public highway grade crossings of Guilford system lines in Vermont. Such structures and crossings existing at this time are identified in Schedule A attached, but the obligation of Vermont under this paragraph will apply as well to any such structures which may be constructed or crossings which may become signally protected in the future.

6. Releases. As of the Effective Date, LVRC and Vermont will each execute and deliver to Guilford and MEC and their respective officers, directors and agents releases of claims which relate to transportation matters and which may have arisen or accrued prior to the Effective Date; provided, however, that Vermont will not be required to release any claims it may have against Guilford or MEC for taxes or any other such claims not related to transportation

matters. As of the Effective Date, Guilford and MEC will execute and deliver to LVRC and its officers, directors and agents releases of claims which relate to transportation matters and which may have arisen or accrued prior to the Effective Date.

7. Effective Date. Except for paragraph 8 below, which will become effective upon execution and delivery of this Settlement Agreement, the other provisions of this Settlement Agreement and the Operating Agreement will become effective ("Effective Date") only upon the occurrence of both of the following conditions precedent:

(a) The litigation by LVRC, Vermont and Eastern Magnesia Talc Company relating to the acquisition of B&M by Guilford, including the matter remanded to the Commission pursuant to Lamoille Valley Railroad Company v. Interstate Commerce Commission, 711 F.2d 295 (D.C. Cir. 1983), shall have been terminated and dismissed with prejudice by the Commission and any courts having jurisdiction over such matters.

(b) This Settlement Agreement, the Operating Agreement and any transactions contemplated hereby or thereby shall have received such approval, if any, as may be required by the Commission, or shall have been exempted from approval, in either case by an order which has become final.

In the event that this Settlement Agreement becomes effective, the rights, obligations and agreements of the parties under paragraphs

4 and 6 above will survive notwithstanding any subsequent termination of the Operating Agreement.

8. Immediate actions. As promptly as possible after the execution and delivery of this Settlement Agreement, the parties will take all such actions as may be necessary and appropriate (a) to cause the Commission to defer any action on the remand referred to in paragraph 7(a) above, pending the occurrence of the Effective Date or the mutual agreement by the parties that the Effective Date will not occur, (b) to terminate and dismiss with prejudice any and all litigation by LVRC or Vermont, and to use their best efforts to have Eastern Magnesia Talc Company terminate and dismiss with prejudice any and all litigation by it, relating to the acquisition of B&M by Guilford and the remand referred to in paragraph 7(a) above, (c) to draft a mutually acceptable form of Operating Agreement, (d) to obtain the approval or exemption by the Commission, as necessary, of this Settlement Agreement, the Operating Agreement and the transactions contemplated hereby and thereby and (e) to obtain the authority necessary for Vermont to fulfill the obligations assumed in paragraph 5 above. In the event that LVRC and MEC are unable to draft a mutually acceptable form of Operating Agreement, the matters remaining in dispute may be submitted to binding arbitration. Each party will select an arbitrator, and the two arbitrators so chosen will select a third.

IN WITNESS WHEREOF, the parties hereto have put their hands and seals the day and year first above mentioned.

ATTEST:

*Henry R. Jenkins*

GUILFORD TRANSPORTATION  
INDUSTRIES, INC.

By

*Robert W. Anestis*  
Robert W. Anestis  
Executive Vice President

MAINE CENTRAL RAILROAD  
COMPANY

ATTEST:

*No Member*

By

*John F. Gerity*  
John F. Gerity  
Vice Chairman of the Board

LAMOILLE VALLEY RAILROAD  
COMPANY

ATTEST:

*No Member*

By

*Robert A. Gensburg*  
Robert A. Gensburg  
President

By

*Edward A. Lewis*  
Edward A. Lewis  
General Manager

ATTEST:

*Henry R. Jenkins*

STATE OF VERMONT

By

*Richard A. Snelling*  
Honorable Richard A. Snelling  
Governor

SCHEDULE A

Public Highway Structures and Grade Crossings

I. Structures

	<u>Town</u>	<u>Street or Route</u>	<u>Number</u>
Maine			
Central	St. Johnsbury	U.S. 2	131.08
B&M	Putney		72.08
	Bellows Falls	Bridge St.	83.80
	Hartford		125.07
	Hartford		125.36
	Norwich	Vt. 10A	127.24
	Newbury		155.49
	Newbury	Vt. 5	158.29
	Newbury	Vt. 5	159.98

II. Crossings

	<u>Town</u>	<u>Street or Route</u>
Maine		
Central	Lunenburg	Town Road
	Concord	Town Road
	Concord	Town Road
	Concord	Concord Trail
	Concord	Town Road
	Concord	Miles Pond Road
	Concord	Town Road
	Concord	Town Road
	Concord	Shadow Lake
	Concord	Town Road
	Concord	Town Road
	Concord	Town Road
	St. Johnsbury	Town Road
	St. Johnsbury	State Highway
	St. Johnsbury	State Road
	St. Johnsbury	Portland Street
	St. Johnsbury	East Street
	St. Johnsbury	State Street
	St. Johnsbury	Ely Street
	St. Johnsbury	Concord Avenue
	St. Johnsbury	Elm Street
	St. Johnsbury	Portland Street

## B&amp;M

<u>Town</u>	<u>Street or Route</u>
Pownal	Station
Pownal	Main Street
Pownal	Bates
No. Pownal	Station Road
No. Pownal	Route 346
Brattleboro	Bridge Street
Brattleboro	Brudies
Bellows Falls	Mill Street
Bellows Falls	Depot Street
Windsor	River Street
Windsor	Depot Street - CV owned B&M maintained
Windsor	Everett Lane - CV owned B&M maintained
Bartland	Route TH 55 - CV owned B&M maintained
White River Jct.	Nutt Street
Norwich	River Road
Thetford	Bridge Street
Thetford	Pavillion Road
Thetford	Pavillion Road
Nortboro	Bridge Road
Ely	Ely Crossing
Fairlee	Orford Street
Fairlee	Heath's Crossing
Bradford	Piermont Road
Bradford	Gove Street
Newbury	Bridge Road
Newbury	Darlings Road
Springfield	Route 5
Putney	Depot Road

# **EXHIBIT C**



212048

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

\_\_\_\_\_  
**DOCKET NO. AB-862X**  
\_\_\_\_\_

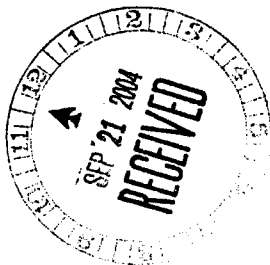
**TWIN STATE RAILROAD COMPANY—  
ABANDONMENT AND DISCONTINUANCE OF SERVICE—  
IN CALEDONIA AND ESSEX COUNTIES, VERMONT**

\_\_\_\_\_  
**REPLY OF THE MAINE CENTRAL RAILROAD COMPANY  
TO VERIFIED NOTICE OF EXEMPTION**

*MAINE CENTRAL RAILROAD COMPANY*  
*SEP 21 2004*  
Robert B. Culliford  
Iron Horse Park  
North Billerica, MA 01862  
(978) 663-1029  
rculliford@guilfordrail.com

Attorney for  
Maine Central Railroad Company

September 20, 2004



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. AB-862X**

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**TWIN STATE RAILROAD COMPANY—  
ABANDONMENT AND DISCONTINUANCE OF SERVICE—  
IN CALEDONIA AND ESSEX COUNTIES, VERMONT**

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**REPLY OF THE MAINE CENTRAL RAILROAD COMPANY  
TO VERIFIED NOTICE OF EXEMPTION**

**I. INTRODUCTION**

The Maine Central Railroad Company ("MEC") hereby replies to the "Verified Notice of Exemption" ("Notice") filed by the Twin States Railroad Company ("TSR") on August 17, 2004 seeking authority to abandon and discontinue service over a portion of a rail line between milepost 0.057 in St. Johnsbury, Vermont and Engineering Station 5503 in Gilman, Vermont (the "Line").<sup>1</sup> Because the Notice contains numerous misrepresentations, incorrect assumptions and evidences a complete misunderstanding of the status of the Line, MEC is filing this reply to request that the Board impose certain conditions on the abandonment and discontinuance of service by TSR so that MEC's common carrier rights and obligations on the Line will not be compromised.

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<sup>1</sup> While styled a Notice of Exemption to Abandon and Discontinue service, as discussed in more detail below the proper relief would be discontinuance authority, as TSR retains a leasehold interest only.

## II. ARGUMENT

### A. MEC Continues to Own the Line and Maintains its Common Carrier Rights and Obligations Notwithstanding TSR's Intent to Discontinue its Leasehold Interest.

First and foremost, TSR seems to confuse its leasehold interest in the Line with that of fee simple ownership and the consequent right to treat this property as its own. Yet, as TSR repeatedly acknowledges throughout the Notice and in its exhibits, TSR's interest in the Line is limited to that of a lessee. Moreover, by entering into a lease dated March 1, 1984, Exhibit A to the Notice (the "Lease"), MEC did not evidence any intent to convey ownership in the Line or its common carrier rights and obligations to TSR or anyone else, nor has MEC evidenced any such intent throughout the term of the Lease.

More particularly, the Lease itself makes it clear that it was the intent of both parties that MEC retain its ownership interest and common carrier rights and obligations in the Line, as evidenced by several sections of the Lease. For example, Section 1.02 of the Lease reserves to MEC the exclusive rights, "...to convey the fee interest in any real estate property constituting part of the Line or to resolve any taking by eminent domain affecting the Line." Additionally, Section 4.01 provides that, "TSR shall handle cars on the Line for the account of MEC. MEC shall have and retain the exclusive right to deal directly with shippers and receivers regarding traffic.." Further, Section 5.03 permits MEC to "...provide service on the Line itself or through a carrier designated by MEC." in the event that TSR fails to provide service in accordance with the terms of the Lease. Plainly, therefore, there is nothing in the terms of the Lease that would indicate that MEC intended to cede its ownership interest and common carrier rights and obligations in the

Line to TSR or anyone else. See generally, *State of Maine, Dept. of Trans.—Acquisition and Operation Exemption—Maine Central RR Co.*, 8 I.C.C.2d 835 (1991).

Furthermore, even if the Lease itself did not clearly show that MEC intended to maintain its common carrier rights and obligations in the Line, it is settled law that when a carrier leases a line of railroad to another party, the lessor carrier not only retains its common carrier rights and obligations, but is also required to provide common carrier service in the event that its lessee were to receive authority to discontinue its operations. *Lehigh Valley RR Co. Proposed Abandonment of Operation*, 202 I.C.C. 659, 663 (1935); *Livestock Terminal Service Co. Abandonment of Operation*, 257 I.C.C. 1, 7 (1944); *Meyers v. Famous Realty, Inc.*, 178 F.2d 811, 814 (2<sup>nd</sup> Cir., 1959). As a result, notwithstanding the efforts of TSR to discontinue its own common carrier rights and obligations over the Line, MEC continues to have such status and the Line will remain subject to the jurisdiction of the Board until such time as MEC applies for and receives authority to abandon and discontinue its common carrier status. *Meyers v. Famous Realty, Inc.* 178 F.2d at 814.

While MEC's continuing ownership interest and common carrier rights and obligations may seem clear from the Lease and established precedent, TSR apparently views this matter in an entirely different light. Rather than simply discontinue its leasehold interest, TSR claims to have the right to also remove the rail, ties, and other track materials for sale, ostensibly to recover its investment in the Line because MEC has somehow breached the Lease.<sup>2</sup> Of course, to permit TSR to take such a step would

<sup>2</sup> Similarly, TSR's claims regarding MEC's alleged breach of the Lease and its resulting remedies are not only unfounded, but are also state law claims that would be preempted until MEC abandons and discontinues its interest in the Line. 49 U.S.C. § 10501(b), *Chicago and Northwestern Trans. Co. v. Kalo Brick & Tile Co.*, 446 U.S. 951 (S. Ct. 1980), *Milford-Bennington RR Co., Inc.—Trackage Rights*

effectively destroy the ability of MEC or its assigns to continue operations and would be a de facto and illegal abandonment of MEC's common carrier rights and obligations in the Line. Accordingly, MEC requests that the Board specifically condition any discontinuance authority upon TSR leaving undisturbed the track, ties and other track materials along the entire length of the Line to permit MEC or its assignee to provide service over the Line in the future, if warranted.

**B. TSR's Representations in the Notice are Misleading and Incorrect.**

In a transparent effort to obtain authority from the Board to unjustly enrich itself through the salvage of rail, ties and other track materials on the Line, TSR has proffered several reasons why MEC has purportedly breached its obligations under the Lease as well as why the Line will never be profitable. Upon a cursory review of the facts underlying the Notice, however, it is plain that TSR is in most instances distorting the history of this transaction, as well as the present state of operations and the Line itself.

First, TSR claims that it has complied with its obligations to maintain the Line in accordance with Section 2.06 of the Lease by purportedly keeping the Line in good condition and repair as warranted by traffic levels. *Notice*, p. 5. TSR then goes on to claim that this maintenance standard is lowered by the lack of customers on the Line. *Id.* Of course, TSR conveniently omits several relevant facts in the Notice. First, TSR is correct in identifying its obligation to maintain and repair the Line as warranted by traffic levels, but somehow overlooks the fact that Section 2.06 of the Lease also requires TSR to maintain the Line *in compliance with all federal and state laws and regulations*.

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*Exemption—Boston and Maine Corp. and Springfield Terminal Railway Co.*, Finance Docket No. 32103, Served September 3, 1993. Likewise, TSR's decision to unilaterally terminate its operating authority is a breach of its obligations pursuant to the Lease, which will also be a matter for an action under state law by MEC.

Of course, the actual condition of the Line shows the fallacy of TSR's statements, as TSR clearly has not performed *any* maintenance or repair work on the Line for several years, and the Line is far from compliance with the Federal Railroad Administration Track Safety Standards as a result. *See, for example., 49 C.F.R. §213.37.* Further, the Line has also fallen into such disrepair that if a customer were to demand service—which has occurred, as discussed further below—such service would not be possible absent extensive rehabilitation, a delay that would not be necessary had *any* work been performed on the Line by TSR. To provide the Board with a more accurate portrayal of TSR's maintenance and repair practices—such as they are—MEC has attached hereto as Exhibit A pictures showing the extensive deterioration of the Line, conclusively showing that TSR's assertions regarding its efforts to comply with the terms of the Lease are without merit.

Second, TSR alleges that MEC has "failed miserably" in its obligation to deal directly with customers regarding traffic on the Line, despite TSR's own admission that the development of traffic on this Line has been difficult at best. *Notice, pp. 4-5.* However, TSR once again fails to tell the entire story, as it somehow omits the fact that MEC has been working with its connecting carriers to develop rail freight business to the paper mill at Gilman which—again contrary to the implication by TSR—is operating today and is interested in rail service. *See attached Exhibit A.* Furthermore, the major impediment to MEC's efforts to market rail service to this mill has been TSR's unwillingness to perform the requisite rehabilitation on not only the Line, but also the remainder of the track subject to the Lease that is presently owned by the State of New Hampshire. In fact, each time that MEC receives a request for rates to or from Gillman

from its connecting carriers, MEC contacts TSR requesting an update as to the status of the Line and when it would be in a condition to support rail service. *See, attached Exhibits B-D.* In one response, an attorney for TSR asserted that the Line would be in a condition to support the service in the spring of 2003, although as the pictures attached hereto as Exhibit A show, this statement was incorrect. *See attached Exhibit E.* In another response, the same attorney for TSR seem to believe that a request for service was made for movement over the Line to St. Johnsbury, Vermont, which would contradict TSR's claim that no request for service has been made by the mill since October of 1999. *See attached Exhibit F, Notice, p. 5.*<sup>3</sup> Clearly, MEC has attempted to develop rail service to the mill at Gilman—service that could be provided today if the Line could support it—but the failure of TSR to meet its commitments presently precludes rail as an option to this facility on either the Line or the remainder of the trackage owned by the State of New Hampshire.

TSR also seems to connect the sale of the easterly portion of the track by MEC to the State of New Hampshire with its allegations that MEC has “failed miserably” to market rail traffic on the Line. Under the best of circumstances, it is difficult to make this connection, but to make matters worse for TSR, the sale of the easterly portion of the Line did not effect any practical or legal change to the nature of operations over the entire track. Rather, MEC simply conveyed its ownership and common carrier rights and obligations to the State, but did nothing to affect TSR's ability to operate over the entire trackage, as MEC assigned its rights and obligations under the Lease to the easterly

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<sup>3</sup> In his March 21, 2003 response, the attorney for TSR is apparently confused by the nature of railroad operations in this region. MEC and its affiliates were contacted for rates to the mill at Gillman because of their connections with other carriers at locations other than the Line. Therefore, MEC and its affiliates would have been contacted regardless of its ownership interest in the Line, but could not accurately respond to these inquiries without advice from TSR regarding the condition of the Line and plans for rehabilitation.

portion of the track to the State and has worked regularly with the State to develop rail business at the Gilman mill. *See attached Exhibit G.* Unfortunately, TSR's unwillingness or inability to restore the entire trackage to a condition that will support rail service has precluded either MEC or the State of New Hampshire from being able to effectively market a rail transportation alternative to the mill at Gilman from either direction. MEC is also at a loss to understand how TSR can claim that the sale to the State of New Hampshire affected TSR at all, since TSR remains the lessee of the entire track, not just the Line, and can operate in either direction notwithstanding the State's ownership interest.

Third, TSR relies upon a study performed on *a separate line of railroad* to imply that the highest and best use of the Line would be for non-railroad purposes since there is little likelihood of a return of railroad service to this separate line of railroad. *Notice, pp. 1-2.* To further buttress its argument, TSR next alleges that MEC and the State of Vermont Agency of Transportation ("VTRANS") have been negotiating the possible acquisition of the Line for conversion to a snowmobile trail by VTRANS. *Notice, p. 6.* Of course, if this assertion were correct, it is doubtful that VTRANS would have filed with the Board a notice of its intent to investigate an offer of financial assistance, a procedure only available if rail service were to continue on the Line. Once again, TSR seems to be wrong on the basic facts.

Finally, TSR relies upon proceedings before the Interstate Commerce Commission ("I.C.C.") some 20 years ago to posture itself as being entitled to compensation because the Lease has not been profitable for TSR. *Notice, pp. 2-4.* Simply put, TSR's characterization of this transaction is completely wrong, as the proceedings



relied upon by TSR clearly show that the I.C.C. did not agree with the characterization of the harmful effects of this transaction put forth on behalf of TSR. Specifically, in denying a request that certain lines be conveyed as part of the control transaction, the I.C.C. found that:

"LVRC has not met the difficult burden of showing an adverse effect on essential services. Obviously, the overhead service provided by LVRC is not essential, since a number of other connections to the Canadian routes exist. To the extent LVRC's local service is affected by the primary transaction, we believe that motor carrier service is reasonably adequate to fill any conceivable transportation void. The overall impact, therefore, is negligible."

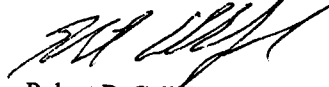
*Guilford Transportation Industries, Inc.—Control—Boston and Maine Corp.*, 366 I.C.C. 394, 354 (1982). In fact, the Lease itself states that it was entered into to resolve litigation brought by LVRC when it did not receive satisfaction at the I.C.C. Plainly, therefore, TSR's attempts to portray itself as the savior of rail service in this region are overstated.

### III. CONCLUSION

In light of the foregoing, MEC respectfully requests that the Board condition any discontinuance authority to require TSR or any person or entity acting in concert with TSR, to leave the Line, track, ties and other track material in place and undisturbed.

September 30, 2004

Respectfully submitted,

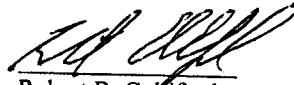


Robert B. Culliford  
Iron Horse Park  
North Billerica, MA 01862  
(978) 663-1029  
rculliford@guilfordrail.com

Attorney for  
Maine Central Railroad Company

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of September, 2004, I caused to be served the foregoing document upon all parties to this proceeding by first class mail, postage prepaid.

  
Robert B. Culliford

# **EXHIBIT B - D**



BOSTON & MAINE CORPORATION  
MAINE CENTRAL RAILROAD COMPANY  
SPRINGFIELD TERMINAL RAILWAY COMPANY

IRON HORSE PARK  
NO. BILLERICA, MASS. 01862

MARKETING DEPARTMENT  
(978) 663-6938  
Fax (978) 663-1009

July 7, 2004

Twin State Railroad Corporation  
P.O. Box 1267  
Trenton, FL 32693

Lamoille Valley Railroad Company  
P.O. Box 1360  
Trenton, FL 32693

Dear Mr. Forbes,

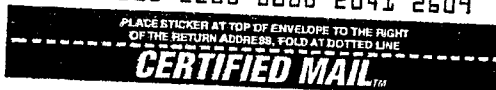
On July 7, 2004, Guilford Rail System received an inquiry from Georgia Pacific-Old Town, ME regarding rates for the movement of 25 cars of woodpulp from Old Town, ME (Georgia Pacific) to Gilman, VT via the "Twin State Railroad" (the "Line"), which you are the current operator. It has been brought to my attention that the line has been embargoed due to track conditions. Due to the present condition of the Line, I am writing to obtain a determination as to the period of time you will require to improve the track condition to allow for the movement of the aforementioned cars.

Please provide the requested information as soon as possible as we intend to respond to GP's request by close of business today. Should you have any questions or comments, please do not hesitate to call.

Sincerely,

Michael Bostwick  
Vice President

7003 2260 0000 2041 2609



7003 2260 0000 2041 2609

7003 2260 0000 2041 2609

PS Form 3849, 11-03	Sent To: Street, Apt. or PO Box City, State, ZIP+4	Total Pcs:	Permitted Restrictions	Relief (Endorsement)	For Use Only	US CE Dom
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BOSTON & MAINE CORPORATION  
MAINE CENTRAL RAILROAD COMPANY  
SPRINGFIELD TERMINAL RAILWAY COMPANY

IRON HORSE PARK  
NO. BILLERICA, MASS. 01862

MARKETING DEPARTMENT  
(978) 663-6938  
Fax (978) 663-1009

June 29, 2004

Twin State Railroad Corporation  
P.O. Box 1267  
Trenton, FL 32693

Lamoille Valley Railroad Company  
P.O. Box 1360  
Trenton, FL 32693

Dear Mr. Forbes,

On June 14, 2004, Guilford Rail System received an inquiry from Canadian National regarding rates for the movement of 10 cars of woodpulp from Jonquire, PQ to Gilman, VT via the "Twin State Railroad" (the "Line"), which you are the current operator. It has been brought to my attention that the line has been embargoed due to track conditions. Due to the present condition of the Line, I am writing to obtain a determination as to the period of time you will require to improve the track condition to allow for the movement of the aforementioned cars.

Please provide the requested information as soon as possible as we intend to respond to CN's request by close of business today. Should you have any questions or comments, please do not hesitate to call.

Sincerely,

Michael Bostwick  
Vice President

7003 2260 0000 2041 2586

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

**CERTIFIED MAIL**



7003 2260 0000 2041 2586

7003 2260 0000 2041 2586

PS Form 3800, June	Street, Apt. No., or PO Box No. City, State, ZIP+4	Sent To	Total Postage & Fr	Return Receipt (Endorsement Required)	Post	Certified Mail (Endorsement Required)	For delivery info (Domestic Mail)	U.S. Postal CERTIFIED
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BOSTON & MAINE CORPORATION  
MAINE CENTRAL RAILROAD COMPANY  
SPRINGFIELD TERMINAL RAILWAY COMPANY

IRON HORSE PARK  
NO. BILLERICA, MASS. 01862

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**MARKETING & SALES DEPARTMENT**  
**978-663-6929**

March 14, 2003

Twin State Railroad Corporation  
P.O. Box 1267  
Trenton, FL 32693

Lamoille Valley Railroad Company  
P.O. Box 1360  
Trenton, FL 32693

Dear Mr. Forbes,

Attached please find a copy of the March 12, 2003 edition of the Atlantic Northeast Rails & Ports. As indicated in Mr. Hardenbergh's article, the Steve Regan Company has purchased the mill and power dam at Gilman, Vermont. The Dirigo Paper Company has agreed to operate the mill with the Siman Paper Group as its primary customer. Dirigo is planning to use rail service, both inbound and outbound.

Currently, the "Twin State Railroad" (the "Line") is embargoed due to track conditions. In light of this potential business and the present condition of the Line, I am writing to obtain a determination as to the period of time you will require to improve the track condition to allow for the movement of cars.

Please provide the information as soon as possible as we would like to respond to any rate requests that we may receive. Should you have any questions or comments, please do not hesitate to call.

Sincerely,

Mr. Richard M. Willey  
Senior Vice President  
Marketing & Sales  
Guilford Rail System

CC: David H. Anderson, Esquire (via fax)  
Leonard M. Singer, Esquire  
R. Culliford

# **EXHIBIT E**



CRAIGHEAD GLICK LLP  
COUNSELLORS AT LAW

277 DARTMOUTH STREET BOSTON MASSACHUSETTS 02116 PHONE 617.859.8200 FAX 617.859.7272  
Leonard M. Singer

March 24, 2003

Richard M. Willey  
Guilford Rail System  
Iron Horse Park  
North Billerica, MA 01862

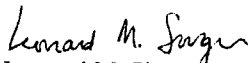
Re: Lease and Operating Agreement - Twin State Railroad Corporation

Dear Mr. Willey:

This will respond to your letter of March 14 addressed to Twin State Railroad Corporation. Twin State anticipates that its railroad will be in condition to allow for the movement of cars as soon as the snow has melted sufficiently so that any required maintenance work can be performed. We regard it as all but certain that any such work will be performed long before there is any need for any operation on the line.

If you need any further information, please do not hesitate to contact me.

Very truly yours,

  
Leonard M. Singer

# **EXHIBIT F**

CRAIGHEAD GLICK LLP  
COUNSELLORS AT LAW

277 DARTMOUTH STREET BOSTON MASSACHUSETTS 02116 PHONE 617.859.8200 FAX 617.859.7272  
Leonard M. Singer

March 21, 2003

Michael Bostwick  
Maine Central Railroad Company  
Iron Horse Park  
North Billerica, MA 01862

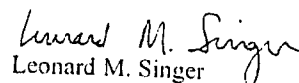
Re: Pulpwood - Philadelphia, Pennsylvania to Gilman, Vermont

Dear Mr. Bostwick:

This will respond to your inquiry to Clyde Forbes concerning the above-referenced potential movement. The rate for any movement over the Twin State Railroad Corporation is set forth in the Lease and Operating Agreement dated as of March 1, 1984 by and among Maine Central Railroad Company, Twin State Railroad Corporation and the Lamoille Railroad Company and, in particular, section 3.01 thereof.

We assume that this traffic will be routed via White River Junction and St. Johnsbury inasmuch as the inquiry concerning this traffic comes from Maine Central (or its affiliate). We note that Maine Central assigned all of its interest in the Lease and Operating Agreement to the State of New Hampshire with respect to the line of railroad between Whitefield, New Hampshire and Gilman, Vermont by instrument dated January 7, 2003. We understand that, as a result of that assignment, the State of New Hampshire has the exclusive right to deal with shippers and receivers regarding traffic on that portion of the railroad.

Very truly yours,

  
Leonard M. Singer

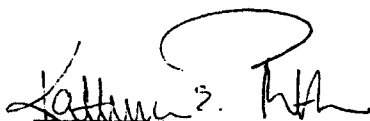
cc: Craig S. Donais  
Katherine E. Potter

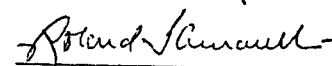
# **EXHIBIT G**

## ASSIGNMENT OF LEASE AND OPERATING AGREEMENT

For consideration paid by the **STATE OF NEW HAMPSHIRE, THROUGH ITS DEPARTMENT OF TRANSPORTATION**, John Morton Building, 1 Hazen Drive, Concord, Merrimack County, New Hampshire ("Assignee") the **MAINE CENTRAL RAILROAD COMPANY**, a Maine Corporation with its principal place of business at Iron Horse Park, North Billerica, Massachusetts ("Assignor") hereby assigns unto the Assignee all of the Assignor's right, title and interest, if any, in the Lease and Operating Agreement between the Maine Central Railroad, the Lamoille Valley Railroad Corporation and the Twin State Railroad Corporation (the "Agreement") entered into on March 1, 1984 affecting a portion of the so-called Twin State Railroad as described in "Exhibit A". A copy of the Agreement is attached hereto as "Exhibit B".

IN WITNESS WHEREOF, the **MAINE CENTRAL RAILROAD COMPANY** has caused this Assignment to be executed in its behalf by Roland Theriault, Vice President, Real Estate of the **MAINE CENTRAL RAILROAD COMPANY**, on this 7<sup>th</sup> day of January, 2003.

  
Witness

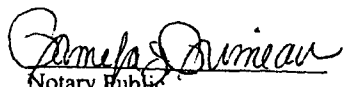
By:   
Roland Theriault  
Vice President, Real Estate

## COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

January 7, 2003

Then personally appeared the above-named Roland Theriault, its Vice President for Real Estate of the **MAINE CENTRAL RAILROAD COMPANY** and acknowledged the forgoing instrument to be his free act and deed of said **MAINE CENTRAL RAILROAD COMPANY**, before me.

  
Notary Public  
My Commission Expires: March 8, 2003

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

2004 OCT 27 P 4:58

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TWIN STATE RAILROAD  
CORPORATION

\*  
U.S. DISTRICT COURT  
DISTRICT OF MASS.  
\*

Plaintiff

04 12292 JLT

v.

MAINE CENTRAL RAILROAD  
COMPANY

Defendant

\*\*\*\*\*

COMPLAINT

Plaintiff Twin State Railroad Corporation brings this action in order to obtain a declaration of the rights and liabilities of the parties pursuant to a written lease.

1. Plaintiff Twin State Railroad Corporation ("Twin State") is a Vermont Corporation having a principal place of business at 1022 East Wade Street, Trenton, Florida 32693.
2. Defendant Maine Central Railroad Company ("Maine Central") is a Maine corporation having a principal place of business at Iron Horse Park, Billerica, Massachusetts 01862.
3. This Court has jurisdiction over this matter pursuant to 28 USC 1332 (a) and (c) because the parties are citizens of different states and the amount in controversy exceeds \$75,000 exclusive of interest and costs.
4. Pursuant to a Lease and Operating Agreement (the "Lease") dated as of March 1, 1984 Maine Central leased and granted Twin State the right to use and operate a line of railroad approximately 28 miles in length running from Whitefield, New Hampshire to Saint Johnsbury Vermont.

5. The initial term of the Lease extended to December 31, 1988. Twin State was given the option to renew the Lease for 4 10-year periods subsequent to December 31, 1988. Twin State has exercised two such options and the present expiration of the lease is December 31, 2008.
6. On or about December 30, 2002 the State of New Hampshire acquired all of the right, title and interest of Maine Central in the portion of the line of railroad running from Whitefield, New Hampshire to Gilman, Vermont constituting approximately 6 of the 28 total miles.
7. The Lease contains the following provision relating to retirement of property:

[Twin State] may request [Maine Central] to retire any property on, or portion of, the Line which may no longer be required for the performance of the duties of [Twin State] under this Agreement and [Maine Central] shall not unreasonably withhold approval of such requests. [Twin State] may retain for its own account any property recovered or proceeds received incidental to any such retirement, but retirement accounting shall be performed by [Maine Central].
8. There has been no traffic on the line of railroad since at least October 1999. The line of railroad running from Gilman, Vermont to Saint Johnsbury, Vermont is no longer required for the performance of the duties of Twin State under the Lease.
9. Twin State applied to the Surface Transportation Board for authority to abandon and discontinue service between Gilman and Saint Johnsbury, Vermont so as to be able to sell and/or salvage the rail, ties and other track materials on the line.
10. Maine Central objected to Twin State's application to the Surface Transportation Board, arguing that Twin State had no right under the Lease to seek abandonment of or to sell

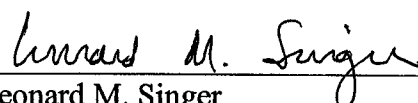
and/or salvage all or any part of the line.

11. The Surface Transportation Board granted Twin State's application to abandon subject, inter alia, to a condition that Twin State leave the line, track, ties and other track materials intact. The Surface Transportation Board said that this condition "may be removed, if appropriate, if [Twin State] and [Maine Central] resolve their apparent disagreement concerning their respective legal rights to the line."
12. There is a genuine dispute between Twin State and Maine Central as to their rights to the line of railroad running from Gilman to Saint Johnsbury, Vermont, including the right to salvage all or any portion of the ties, track and other materials located thereon.

WHEREFORE, Twin State requests that the Court (1) declare that the ties, track, equipment and other property between Gilman and Saint Johnsbury Vermont are no longer required for the performance of Twin State's duties under the lease; (2) declare that Twin State has the right to retire such property and to retain any proceeds therefrom; (3) otherwise declare the rights and liabilities of the parties under the Lease; and (4) grant such other and further relief as it deems just and proper.

TWIN STATE RAILROAD  
CORPORATION

By its attorneys,

  
\_\_\_\_\_  
Leonard M. Singer  
BBO No. 464600  
Craighead Glick  
277 Dartmouth Street  
Boston, Massachusetts 02116  
(617) 859-8200



**EXHIBIT E**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

TWIN STATE RAILROAD  
CORPORATION,

Plaintiff,

v.

MAINE CENTRAL RAILROAD  
COMPANY,

Defendant.

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Civil Action No. 04-12292-JLT

ORDER

August 3, 2005

TAURO, J.

This court hereby orders that:

1. Defendant's Motion to Dismiss the Complaint [#3] is DENIED WITHOUT PREJUDICE to refiling after the Surface Transportation Board ("STB") has answered the following questions:
  - a. Whether STB Docket No. AB-862X decided October 12, 2004, which states that "uncertainty" exists regarding Twin State Railroad's ("TSRR") "right to abandon and salvage the line," preempts any claim before this court by TSRR that "the ties, track, equipment and other property" on the railroad line running from Gilman, VT to St. Johnsbury, VT (the "Line") are no longer required for the performance of TSRR's duties pursuant to the Lease and Operating Agreement dated March 1, 1984 ("Lease") with Maine Central Railroad;

- b. Whether the STB's abovementioned decision preempts any claim before this court by TSRR that it has the right to "retire" the ties, track, equipment and other property on the Line and "retain any proceeds therefrom" pursuant to the Lease with Maine Central Railroad; and
  - c. Whether the STB's abovementioned decision preempts any claim before this court by TSRR to "otherwise declare the rights and liabilities of the parties under the Lease";
- 2. The STB shall attempt to advise this court of its answer to these questions within ninety (90) days of the date of this Order; and
  - 3. The Parties shall take such action as is necessary to assist the STB in resolving these questions as quickly as possible.

IT IS SO ORDERED.

/s/ Joseph L. Tauro  
United States District Judge